

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

(Oakland, California)

ATC/VANCOM, INC.  
Employer<sup>1</sup>

and

Case 32-RC-5255

TEAMSTERS LOCAL 287,  
INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, AFL-CIO  
Petitioner

**DECISION AND DIRECTION OF ELECTION**

The Employer, ATC/Vancom, Inc., operates a specialized local transportation service for qualified individuals in Santa Clara County, California. The Petitioner, Teamsters Local 287, International Brotherhood of Teamsters, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time drivers, lift attendants, fuelers, and utility employees employed by the Employer at its facilities at 533 Burke Street and 1535 South 10<sup>th</sup> Street, in San Jose, California. A hearing officer of the Board held a hearing in this matter. Both parties participated in the hearing and announced at the hearing that they were waiving their right to file briefs.

At the hearing, the parties stipulated to all of the material facts in this case, including the supervisory status of numerous individuals.<sup>2</sup> Neither party has raised any argument opposing the holding of an election in this case, and there are no disputed issues in this case.

---

<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The Employer stated on the record that it would not agree to a stipulation to hold the election, because it

I have considered the evidence and stipulations in this case, and, as discussed below, I have concluded that an election is warranted in this case and that, based on the parties' stipulation of facts on the record, the individuals covered by the parties' stipulations are statutory supervisors who excluded from the unit found appropriate in this case. Accordingly, I have directed an election in a unit that consists of approximately 299 employees. To provide a context for my conclusions in this matter, I will first provide an overview of the Employer's operations. Then, I will present the additional relevant facts and my reasoning regarding the supervisory status issue and regarding the eligibility of certain employees who are scheduled to be laid-off for a brief period this summer.

### **OVERVIEW OF OPERATIONS**

The Employer, an Illinois corporation licensed to do business in California, is engaged in the local transportation of elderly persons, disabled persons, children and other persons, as an indirect subcontractor for Santa Clara County, California. The Employer conducts its Santa Clara County operations out of two facilities located in San Jose, California, which are located at 1535 S. 10<sup>th</sup> Street and 533 Burke St. The record establishes that the Employer, during the past twelve months and in the course and conduct of its operations, has derived gross revenues in excess of \$250,000, and, during that same period, has purchased and received at its San Jose, California facilities in goods, materials and supplies valued in excess of \$50,000 directly from suppliers located outside the State of California.

The Employer employs 272 drivers, 18 lift attendants, 7 fuelers, and 1 full-time utility employee and 1 part-time utility employee in its Santa Clara County operations. At

---

wants the Regional Director to issue a decision deciding the supervisory status of these individuals.

the hearing in this case the parties stipulated that the Union is a labor organization within the meaning of the Act and stipulated to the appropriateness of the following bargaining unit:

All full-time and regular part-time drivers, lift attendants, fuelers, and utility employees employed by the Employer at its facilities at 533 Burke Street and 1535 South 10<sup>th</sup> Street, in San Jose, California; excluding all full-time and regular part-time dispatchers who have spent 50% or more of their time worked in the 13-week period preceding the eligibility date performing the duties and responsibilities of the dispatch position, managerial and administrative employees, office/clerical employees, mechanics, all other employees, guards, and supervisors as defined in the Act.

### **SUPERVISORY STATUS**

The parties further stipulated that the persons whose names and respective job classifications are listed below are supervisors as defined in Section 2(11) of the Act. In this regard, the parties also stipulated that, as a function of their duties in their respective job classifications, the individuals listed below possess and use independent authority, in the interest of the Employer, to hire, promote, discipline, and discharge employees; to responsibly assign and direct the work of employees; and to adjust employee grievances; and/or to effectively recommend such action. Finally, the parties stipulated that dispatchers, in assigning and directing the work of employees, base their decisions on their own evaluation of employee skills, timing and other factors, without relying on pre-established guidelines or standing orders, and that the assignment and direction of work is not of a routine or clerical nature. Based on the parties' stipulation as to the authority of these individuals and as to the amount of discretion they exercise in carrying out their duties and authority, I find, that these individuals are supervisors as defined in Section 2(11) of the Act and they are excluded from the unit found appropriate in this case.

Erik Zandhuis - Assistant General Manager	Daniel Muniz - Data Analyst
Ruth Campbell - Human Resources Manager	Brian Smith - Scheduling Supervisor
Aaron Langmayer - Operations Manager	Leon Garcia - Scheduling Supervisor
Tommy Green - Safety & Training Manager	Laura Silencio - Assignment Personnel
Stephen Moore - HR Administrator	Jamie Lopez - Assignment Personnel
Rafael Cisneros - Facilities Supervisor	Maria Redmund - Assistant Personnel
Paul Camerina - Facilities Supervisor	Noella Rios - Dispatcher
Efren DeCastro - Road Supervisor	Julie Garcia - Dispatcher
Anna Rivera - Road Supervisor	Gloria Sandoval - Dispatcher
Daniel Alday - Road Supervisor	Bismark Torres - Dispatcher
Richard Amaya - Road Supervisor	Bashir Baluch - Dispatcher
Juana Law - Asst. Manager of Safety & Training	Shir Baluch - Dispatcher
Rosie Beltran - Customer Service Supervisor	Enedina Gutierrez - Dispatcher
Ameur Kallel - Senior Supervisor	Henry Lopez - Dispatcher
Richard Norwood - Senior Supervisor	Holly Miller - Dispatcher
Kevin Hayes - Senior Supervisor	Rita Quiroz - Dispatcher
Ray Coronado - Senior Supervisor	Zolmay Rasuli - Dispatcher
Jason Wigney - Maintenance Support Supervisor	Tayde Rodriguez - Dispatcher

### **ELIGIBILITY OF EMPLOYEE WHO ARE TO BE LAID OFF**

The record establishes that the Employer will lay off from 10 to 12 of its lift attendants on June 11, 2004, due to a lessening of work that will occur due to the end of the school year. The record also establishes that the Employer intends to recall these laid-off lift attendants in August 2004, when the school year starts again, and that the Employer has historically followed this pattern of layoff and recall for the lift attendants. Because the lift attendants who will be laid off on June 11, 2004, have a reasonable expectancy of recall in the near future, I find that they are eligible to vote in the election directed herein. See *Higgins, Inc.*, 111 NKLRLB 797 (1955) and *Madison Industries*, 311 NLRB 865 (1993).

### **CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, lift attendants, fuelers, and utility employees employed by the Employer at its facilities at 533 Burke Street and 1535 South 10<sup>th</sup> Street, in San Jose, California; excluding all full-time and regular part-time dispatchers who have spent 50% or more of their time worked in the 13-week period preceding the eligibility date performing the duties and responsibilities of the dispatch position, managerial and administrative employees, office/clerical employees, mechanics, all other employees, guards, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by TEAMSTERS LOCAL 287, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO. The date, time, and

place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior*

*Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-521, on or before **June 8, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

#### **Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential

voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on or before **June 15, 2004**. The request may **not** be filed by facsimile.

Dated at Oakland California this 1st day of June 2004.

---

Alan B. Reichard  
Regional Director  
National Labor Relations Board  
Region 32

32-1287

177-8501  
362-6766-1050